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January 14, 2004

T.R.A. DOCKET ROOM

Guy M. Hicks
General Counsel
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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of US LEC Against BellSouth and Request for Expedited
Ruling and for Interim Relief*
Docket No. 03-00639

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Answer* in the above-referenced docket. This afternoon, US LEC served BellSouth with a copy of an *Amendment* to its *Complaint*. BellSouth obviously has not had time to prepare a response to the *Amendment* and the attached *Answer* does not address the *Amendment*. BellSouth will file a response to the *Amendment* within 10 business days. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of US LEC Against BellSouth and Request for Expedited Ruling and for Interim Relief*

Docket No. 03-00639

ANSWER OF BELL SOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") responds to the *Complaint and Request for Expedited Ruling and for Interim Relief* filed by US LEC on December 15, 2003 ("the Complaint") as follows:

PARTIES

1. The allegations contained in Paragraph 1 of the Complaint are admitted upon information and belief.
2. The allegations contained in Paragraph 2 of the Complaint are admitted.

JURISDICTION

3. The allegations contained in Paragraph 3 call for conclusions of law to which no response is required.

FACTUAL BACKGROUND

4. It is admitted that calls from US LEC customers are routed over the BellSouth network to BellSouth customers in Tennessee and elsewhere and that BellSouth provides Caller ID services to BellSouth customers in Tennessee and elsewhere. It is further admitted that BellSouth offers Caller ID services, which include Caller ID-Deluxe, pursuant to Tennessee tariffs. Caller ID-Deluxe generally

allows for the display of the name of the person or business initiating the call. The Caller ID-Deluxe service does not guarantee that the BellSouth end-user will get all of the names from callers using BellSouth or other telecommunications companies' networks to originate their calls. Except as herein admitted, the allegations contained in Paragraph 4 are denied.

5. It is admitted that on or about August 1, 2003, TSI Telecommunications Network Services, Inc. (TSI) and BellSouth entered into a Calling Name Database Access Service Agreement (CNAM Agreement) by which TSI would make available electronic information to BellSouth on the identity of callers using other carriers. Nothing in the BellSouth-TSI contract or the BellSouth-US LEC interconnection agreement obligates BellSouth to query TSI's CNAM database. This contract has no volume or term requirements and specifically states: **"This Agreement does not require either Party to Query the database of the other Party."** Upon information and belief, BellSouth believes US LEC has a contractual relationship with TSI. Except as herein admitted, the allegations contained in Paragraph 5 are denied.

6. There is no Paragraph 6 in the Complaint.

7. It is admitted that BellSouth does not currently query the identity of callers from the TSI database in Tennessee. The TSI-BellSouth contract does not require BellSouth to query TSI's CNAM database. Nor does the contract require BellSouth to query the TSI CNAM database for US LEC's names when a US LEC end-user places a call to a BellSouth end-user. Additionally, neither that contract nor TSI is within the jurisdiction of the TRA. Except as herein admitted and to the

extent any further response is required, the allegations contained in Paragraph 7 are denied.

8. BellSouth lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Complaint and therefore denies said allegations. BellSouth, however, would like to point out that, regardless of what US LEC or its customers may "report," the presence or absence of a caller's name does not affect BellSouth's "Privacy Director" service, which only evaluates whether the caller's number is blocked by the caller or cannot be delivered, as set forth in more detail in BellSouth's General Subscriber Service Tariff A13.70. Additionally, BellSouth's end-users do not know the telecommunications provider of the originating caller, whether it is a US LEC customer or otherwise. BellSouth's end-users have every right not to answer the call of a US LEC end user should they so choose.

9. It is admitted upon information and belief that all caller numbers and some caller names are delivered to BellSouth customers in Tennessee for calls originating from other telecommunications networks that are not otherwise blocked or made anonymous by the originating caller. Except as herein admitted and to the extent any further response is required, the allegations contained in Paragraph 9 are denied.

10. BellSouth lacks sufficient information to form a belief as to the truth or falsity of the allegations as to why US LEC may be losing customers or failing to attract prospective customers. Additionally, BellSouth denies causing any damage

to US LEC's reputation as a telecommunications provider. BellSouth denies all remaining allegations contained in paragraph 10.

11. BellSouth is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11, particularly when US LEC: (1) does not identify the "representative of the Georgia Commission" in question; or (2) disclose when this "prompting" allegedly occurred. Nonetheless, BellSouth admits that the Georgia Public Service Commission staff has encouraged the parties to resolve their differences, although BellSouth denies that the Georgia Commission has made any specific "request" of BellSouth concerning this issue. To the extent any further response is required, the allegations contained in Paragraph 11 of the Complaint are denied.

RESPONSE TO FIRST CLAIM FOR RELIEF

12. BellSouth incorporates by reference as if fully set forth herein the responses to allegations contained in Paragraphs 4-11 of the Complaint.

13. The allegations contained in Paragraph 13 of the Complaint call for a conclusion of law; therefore no response is required. Moreover, US LEC purports to "quote" language from A13.9.3A5 which does not exist in this tariff.

14. The allegations contained in Paragraph 14 of the Complaint call for a conclusion of law; therefore no response is required.

15. The allegations contained in Paragraph 15 of the Complaint are denied.

RESPONSE TO SECOND CLAIM FOR RELIEF

16. BellSouth incorporates by reference as if fully set forth herein the responses to allegations contained in Paragraphs 1-15 of the Complaint.

17. The allegations contained in Paragraph 17 of the Complaint call for a conclusion of law; therefore, no response is required.

18. The allegations contained in Paragraph 18 of the Complaint are denied.

RESPONSE TO THIRD CLAIM FOR RELIEF

19. BellSouth incorporates by reference as if fully set forth herein the responses to allegations contained in Paragraphs 1-18 of the Complaint.

20. The allegations contained in Paragraph 20 of the Complaint call for conclusions of law to which no response is required..

21. The allegations contained in Paragraph 21 are denied. BellSouth continues to deliver the names of callers who are customers of BellSouth, as well as customers of other CLECs that store their names in BellSouth's CNAM database, the CLEC's own database, and other various 3rd parties' CNAM databases.

RESPONSE TO FOURTH CLAIM FOR RELIEF

22. BellSouth incorporates by reference as if fully set forth herein the response to allegations contained in Paragraphs 1-21 of the Complaint.

23. The allegations contained in Paragraph 23 call for conclusions of law to which no response is required. It should be noted, however, that US LEC may store its own CNAM information, contract with another 3rd party vendor for CNAM database storage, or store its names in BellSouth's CNAM database.

24. The allegations contained in Paragraph 24 are denied.

25. The allegations contained in Paragraph 25 call for conclusions of law to which no response is required. To the extent any response is required, the allegations contained in Paragraph 25 of the Complaint are denied.

Except as expressly admitted, all allegations contained in the Complaint are denied, including US LEC's claim that its Complaint is entitled to expedited review and ruling by the TRA. There is no basis for putting this Complaint ahead of the other numerous matters pending before the Authority.

FIRST AFFIRMATIVE DEFENSE

US LEC asserts that BellSouth is violating its retail tariff when US LEC is not a retail customer. On information and belief, US LEC is not even buying Caller ID service from BellSouth. BellSouth is in full compliance with its tariffs, and nothing in the tariffs obligates BellSouth to provide the name of every calling party on every call to a BellSouth Caller ID-Deluxe customer. US LEC's concerns about "discriminatory implications and impacts" are misplaced because BellSouth does deliver calling name and number information for customers who receive voice service from carriers other than BellSouth, to the extent such name and number information is contained in databases to which BellSouth launches queries for Caller ID purposes. US LEC has choices for database providers in which to store their customer names and telephone number information other than TSI, and were US LEC to choose a provider

whose database BellSouth is querying, US LEC customer name and number information would be delivered to BellSouth's Caller ID-Deluxe customers.

SECOND AFFIRMATIVE DEFENSE

Although US LEC couches its claim in terms of dissatisfaction among US LEC customers, BellSouth believes that this dispute is about something much more basic – money. BellSouth believes that TSI has promised to pay US LEC every time BellSouth launches a query to TSI's database to obtain US LEC customer calling name and number information. While there may be nothing wrong with such an arrangement, BellSouth's decision to stop sending queries to TSI's database would presumably mean that US LEC would not receive compensation from TSI in connection with such queries and may well explain US LEC's decision to complain to the Authority. If US LEC has a "kickback" or revenue sharing arrangement with TSI, it should acknowledge as much so that the Authority can fully understand US LEC's financial interests in this matter.

THIRD AFFIRMATIVE DEFENSE

The contract between TSI and BellSouth expressly states "this Agreement does not require either Party to Query the database of the other Party." That contract, which has not been breached by any party, is not subject to the jurisdiction of the Authority.

FOURTH AFFIRMATIVE DEFENSE

The Caller ID-Deluxe and Privacy Director Services are services that BellSouth provides to its customers and to which its customers may voluntarily choose to pay for and receive. BellSouth incurs the costs related to providing

these services. They are not services mandated by any federal or state requirement, and in fact, many local exchange carriers, including, upon information and belief, US LEC, do not provide them. US LEC lacks standing to assert any claim related to the Caller ID-Deluxe and Privacy Director Services that BellSouth provides to its own customers, that BellSouth's customers pay for, and for which BellSouth incurs costs to provide.

FIFTH AFFIRMATIVE DEFENSE

The Authority lacks subject matter jurisdiction over contracts regarding unregulated services with unregulated entities (such as TSI) that are not subject to Authority approval or regulation. US LEC lacks standing to bring the Complaint on behalf of TSI.

Based on each of these affirmative defenses, US LEC's Complaint should be dismissed.

WHEREFORE, having fully responded to US LEC's Complaint, BellSouth respectfully prays:

1. That this Complaint be dismissed;
2. That US LEC not receive or recover or realize any relief in this proceeding; and

3. For such other and further relief as the Authority deems just and proper.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2004, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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